

**United States Department of the Interior
Bureau of Land Management**

Environmental Assessment MT-C010-2009-035

Finding of No Significant Impact and Decision Record

**Pryor Mountain Wild Horse Range 2009 Gather Plan
and Environmental Assessment (EA)
MT- C010-2009-35**

BUREAU OF LAND MANAGEMENT

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**Decision Record / Finding of No Significant Impact
Billings Field Office**



**DECISION RECORD (DR)
AND
FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**Pryor Mountain Wild Horse Range 2009 Gather Plan
and Environmental Assessment (EA) MT-C010-2009-35**

INTRODUCTION

This decision is being issued in order to gather nearly all wild horses on or adjacent to the PMWHR, treat mares with fertility control, balance the sex ratios and remove 70 excess adult wild horses and associated foals; maintain a population of 120 wild horses within the Pryor Mountain Wild Horse Range (PMWHR) in coordination with the Custer National Forest and Bighorn Canyon National Recreation Area. The gather would be conducted beginning on or around September 1, 2009 and ending when a total of 70 excess adult wild horses and any associated foals were removed.

Two helicopter inventories of the PMWHR and USFS lands were completed in March and April of 2009. The current estimated population is 39 wild horses permanently residing on USFS lands and 150 wild horses on the PMWHR or moving back and forth from the PMWHR. The established Appropriate Management Level (AML) for the PMWHR is 95 adult horses plus or minus 10%. A recent analysis of the AML and the 2009 Herd Management Area Plan indicated that 90-120 wild horses would achieve a thriving natural ecological balance within the wild horse range.

Through review of wild horse census, distribution, forage utilization, ecological condition, trend data, and precipitation data it has been determined that an excess population of wild horses exists within the PMWHR, and there are excess wild horses residing outside the PMWHR. It has also been determined that a post-gather population of 120 wild horses within the PMWHR will contribute to promoting a thriving natural ecological balance.

On July 17, 2009, the BLM Billings Field Office mailed out notices that the Pryor Mountain Wild Horse Range 2009 Draft Gather and Population Management Plan and Preliminary Environmental Assessment would be available for public comment on July 20, 2009 for a 30 day comment period. Prior to the close of the comment period 54 letters were received. Additional letters were received after the close of the comment period; upon review these letters did not provide any additional comment or information. Due to analysis of comments it has been determined that clarifications to the proposed action are warranted; the proposed action was refined to include identification of wild horses by age classes for removal and fertility treatment, and elimination of remote darting under this proposed action.

The Billings Resource Management Plan (RMP) and Final EIS (September 1984), Record of Decision (ROD), has been reviewed, and the proposed population controls are in conformance with objectives to manage for a balance between a healthy population of wild horses and improvements in range condition, wildlife habitat, and watershed condition.

The Pryor Mountain Wild Horse Range Herd Management Plan (BLM-MT-PT-84-019-4321/June 1984) and July 1992 revision (MT-025-2-18) provide the authority to manage the horse herd at an established (AML) and make management decisions on the basis of animal type,

conformation, color, age, sex, location and free-roaming behavior. The plan directs “The population of a herd area will be held at a level that provides opportunity for improvement of range condition, herd health and viability, wildlife habitat and watershed condition, or maintains these in good condition.”

The Pryor Mountain Wild Horse Range/Territory revised Herd Management Area Plan May 2009 (BLM MT-010-08-24) identified that 120 wild horses will result in a thriving natural ecological balance when fertility control is utilized. Although the 2009 HMAP is under appeal the plan has management decisions also on the basis of animal type, conformation, color, age, sex, preservation of characteristics, herd characteristics, and animal health; the analysis of monitoring data still indicates that 120 wild horses will result in a thriving natural ecological balance.

DECISION

In accordance with the PMWHR 2009 Gather Plan and EA MT-C010-09-35, it is my decision to implement the Proposed Action. Nearly all wild horses from the PMWHR and adjacent lands will be gathered, fertility control applied to up to 60 mares, sex ratios balanced when applicable and up to 70 adult wild horses and any foals with identified mares will be removed and the population will be managed at 120 wild horses within the PMWHR.

This decision constitutes my final decision to gather and remove excess wild horses and burros from within and outside the boundaries of the PMWHR. Pursuant to Title 43 of the Code of Federal Regulations at 4770.3(c), the PMWHR 2009 gather is approved for implementation upon the date of my signature below. Gather operations will begin on or about September 1, 2009 and last until management objectives are attained.

RATIONALE

Excess wild horses are permanently residing outside the wild horse range and creating conflicts with legal uses and resources of those lands. Excess wild horses need to be removed from the PMWHR to achieve a thriving natural ecological balance between wild horse populations, wildlife, vegetation, available water, and maintain multiple use relationships as authorized under Section 3(b)(2) of the 1971 WFRHBA and section 302(b) of the Federal Land Policy and Management Act of 1976.

A gather is necessary to work toward a thriving natural ecological balance and to remove wild horses from outside of PMWHR boundary to protect the range from deterioration associated with overpopulation. Additionally, excess wild horses need to be removed from the area to preserve wild horse health. Conditions of the rangeland and wild horse habitat are detailed in the, EA MT C010-2009-35 as well as the PMWHR HMAP 2009, PMWHR Evaluation of February 2008 and the Natural Resources Conservation Service (NRCS) Report of 2004.

The proposed action would:

- Help limit wild horses to areas within the established Herd Management Area (HMA).
- Prevent utilization objectives from being exceeded in larger areas, and reduce the amount of use during the critical growth period for perennial grasses;
- Decrease forage competition among wild horses and wildlife;

- Prevent deterioration of rangelands and vegetation resources;
- Maintain a multiple use relationship for the area.

Outside the PMWHR, populations of wild horses are negatively affecting resources and legal uses of USFS lands. Within the PMWHR, populations of wild horses in excess of the established AML are negatively affecting the rangeland resources and herd health. Implementing the action and working toward a thriving natural ecological balance through implementation of the Proposed Action would ensure that objectives are met and progress made towards achieving the Standards for Rangeland Health.

The following constitutes the rationale for making this decision effective upon issuance:

(a) Potential Damage to Rangeland and Riparian Resources.

Population and resource monitoring has determined that current wild horse populations are exceeding the range's ability to sustain wild horse use over the long-term, and animals are permanently residing outside the PMWHR. Resource damage is occurring and will likely continue without immediate action. Riparian areas are receiving heavy utilization, few watering sites are available, and native perennial grasses are limited in lower elevations and throughout winter habitat. Continued over population of wild horses will result in over utilization of remaining forage and further degradation of habitat utilized by wild horses and wildlife.

(b) Potential Impacts to Animal Health.

Rangeland vegetation is limited throughout the lower elevations of the PMWHR due to past drought, current range conditions, and limited water. If the current population of wild horses is confined to the boundaries of the PMWHR, their health is at risk under the current situation, and unless the populations of wild horses within the project area are reduced through the proposed removals, wild horse body condition will decline through the winter.

In accordance with 43 CFR 4720.1, upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately.

AUTHORITY

The authority for this decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

§4700.0-6 Policy

- (a) Wild horse and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;

- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

§4710.4 Constraints on Management

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

§4720.1 Removal of excess animals from public lands

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animal immediately in the following order:

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title;
- (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part.

§4770.3 Administrative Remedies

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.

(c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple-use relationship shall be effective upon issuance or on a date established in the decision.

APPEAL PROVISIONS

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4Subpart E 4.400, et seq. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error. The appellant has the burden of showing that the decision appealed from is in error.

The petition must be served upon the same parties identified below. Copies of the notice of appeal and petition for a stay must also be submitted to the Bureau of Land Management at the following address:

Jim Sparks, Field Manager
Billings Field Office
5001 Southgate Drive
Billings, MT 59101

Copies of the notice of appeal and petition for a stay must also be submitted to:

U.S. Department of the Interior
Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

A copy must also be sent to the appropriate office of the Solicitor at the same time the original documents are filed with the above office.

Office of the Field Solicitor
U.S. Dept. of the Interior
Rocky Mountain Region
P.O. Box 31394
Billings, MT 59107-1394

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals; therefore, they will not be accepted.

APPROVAL

The PMWHR 2009 wild horse gather is approved for implementation beginning on September 1, 2009. This decision is effective upon issuance in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3(c) because removal of excess animals is necessary to protect animal health and prevent further deterioration of rangeland resources. It may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part Subpart 4.400, et seq.

/s/ James M. Sparks
James M. Sparks
Field Manager
Billings Field Office

08/27/09
Date

FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis and consideration of potential environmental impacts detailed in Environmental Assessment (EA) MT-C010-2009-35, the context and intensity of effects, the RMP, applicable laws, regulations, policies and public comment, I have determined that the environmental impacts associated with the Proposed Action are not significant individually or cumulatively and will not significantly affect the quality of the human environment. After consideration of the environmental effects described in the EA and supporting documentation, I have determined that the Proposed Action identified in the EA is not a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. Therefore, preparation of an Environmental Impact Statement (EIS) is not required as per Section 102 (2)(c) of the National Environmental Policy Act (NEPA). This finding and conclusion is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

RATIONALE

The Proposed Action identified in the accompanying Decision Record would, as best as can be determined, prevent unnecessary or undue degradation of public land resources. Resource review and analyses have been coordinated with other federal and state agencies. Resources determined to be potentially impacted were analyzed in the EA specific to the Proposed Action. This action is designed to maximize genetic interchange and diversity within the wild horse population; retain characteristics unique to this herd; maintain multiple use relationships for the area; limit wild horses to the wild horse range while providing protection of archaeological resources, paleontological resources and sensitive species resources; and prevent unnecessary or undue degradation of public land resources. Based on the analysis, impacts, including cumulative impacts, to these resources are considered insignificant (see definition of significance in 40 CFR 1508.27).

CONTEXT

The Bureau of Land Management (BLM) Billings Field Office has managed the Pryor Mountain Wild Horse Range since 1968. Since that time, the BLM's mandates have changed from simply protecting wild horses to protection, management, and control of wild horses. Part of the current mandate directs the BLM to manage wild horses "where presently found (in 1971) as an integral part of the natural system of the public lands" and "protect and manage wild free-roaming horses and burros as components of public lands" while managing "in a manner that is designed to achieve and maintain a thriving natural ecological balance on public lands".

Meeting mandates has proven to be challenging. At times the PMWHR attracts national and international attention. Proper wild horse management sometimes evokes controversy, emotionalism, and public outcry. Balancing BLM's legal obligations with public sentiment continues to be a challenge in the management of the PMWHR.

In 2004, the Natural Resource Conservation Service (NRCS) completed a survey and assessment of the PMWHR. The survey and assessment determined ecological conditions or difference between current vegetation communities and the historic climax plant communities (HCPC),

apparent trend, and a potential stocking rate. Based upon the survey and assessment, it became apparent that management practices needed adjustment.

In November 2007, the Draft PMWHR Evaluation was issued to the public to solicit additional data, information, or analysis along with technical recommendations. In February 2008, the PMWHR Evaluation was finalized. The data was analyzed and evaluated to determine if law, regulation, policy, management objectives and rangeland health standards were being met. In addition, technical recommendations were made to meet these requirements where they weren't being met. As a result of the evaluation it was determined a revision of the current plan provided the best opportunity to ensure conformance with public land laws, regulations, policies, and land use plans.

Based upon the NRCS Survey and Assessment 2004, PMWHR Evaluation 2008 and the PMWHR HMAP 2009 the need to manage wild horses in a thriving natural ecological balance within the productive capacity of their habitat and protect the range from deterioration associated with over-population were identified. The public was asked to participate by providing comments, alternatives to proposed projects and management actions, and providing additional data, information, or analysis.

Wild horses from the PMWHR were last gathered in summer 2006. There have been 24 previous wild horse gathers from the PMWHR. Appropriate management level (AML) is the number of wild horses (excluding the current years foal crop), determined through BLM's planning process, to be consistent with the objective of achieving and maintaining a thriving natural ecological balance (TNEB) and multiple-use relationship. The Pryor Mountain Herd Management Plan (HMAP, BLM-MT-PT-84-019-4321/June 1984) and the Billings Resource Area Management Plan (September 28, 1984) established an initial stocking rate (AML) for the range at 115-127 wild horses. The AML was revised in July 1992 and set at 85-105 adult horses (MT-025-2-18). BLM's mandate, however, is to manage for healthy, self-sustaining herds on healthy rangelands. Habitat objectives in the 1984, 1992 HMAP are to manage for a slight upward trend in range health (HMAP, BLM-MT-PT-84-019-4321/June 1984). In 2009 the PMWHR HMAP revised the AML to a level of 90-120 wild horses. Cumulative impacts, including weather, drought and grazing, have resulted in the current conditions.

The wild horse removal proposed in the EA involves removing approximately 70 excess adult wild horses and any foals with excess mares both within and outside the PMWHR resulting in a post-gather population of approximately 120 wild horses (excluding the current years foal crop) while limiting wild horses to the PMWHR to the furthest extent possible. The Proposed Action would result in a post gather population that would achieve a thriving natural ecological balance and maintain multiple use relationships, and bring the BLM in conformance with the law. This action also should result in recovery of rangeland vegetation communities and prevent further degradation to the range. Although the gather area is administered by the Forest Service, National Park Service and BLM; the BLM Billings Field Office is responsible for maintaining and managing the wild horse population. The project area is located approximately 13 miles northeast of Lovell, Wyoming in Bighorn County, Wyoming and Carbon County, Montana.

INTENSITY

1) *Impacts that may be both beneficial and adverse.* The Environmental Assessment (EA) considered both beneficial and adverse impacts of the gather and removal of wild horses. Removing excess wild horses would reduce the level of use of rangeland and riparian vegetation, and help alleviate competition for resources between wildlife and wild horses. Removal of excess wild horses will allow for the recovery of natural resources, such as soils, vegetation, watersheds, wildlife, and wild horse habitat.

Site clearances for archaeological and plant species of concerns would be conducted prior to the construction of temporary trap sites and holding facilities. Standard operating procedures would be followed to minimize stress on wild horses and impacts to other resources. Wild horses removed from the project area would be transported to the Britton Springs Administrative Site and prepared for adoption, sale or long-term holding.

2) *The degree to which the proposed action affects public health or safety.* The Wild Horse and Burro Standard Operating Procedures (EA, Appendix II) would be used to conduct the gather and are designed to protect human health and safety, as well as the health and safety of wild horses. The Proposed Action would have minimal affects to public health or safety.

3) *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* There are no park lands, prime farmlands, wetlands, or wild and scenic rivers, within the gather area. The East Pryor's Area of Critical Environmental Concern (ACEC) along with the Burnt Timber Canyon Wilderness Study Area (WSA), Pryor Mountain WSA, Big Horn Tack-On WSA, and Bighorn Canyon National Recreation Area WSA are within the gather area. Gather activities are designed to be minimally intrusive and would have no permanent surface disturbance or impact on these values. A cultural resources inventory would be completed prior to constructing temporary trap sites and holding facilities. If cultural resources are found in an area, a new location would be determined to set up temporary trap sites.

4) *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Effects of the gather are well known and understood. No unresolved issues were raised following public notification of the proposed gather. This is demonstrated through the effects analysis in the EA.

5) *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* The Proposed Action has no known effects on the human environment which are considered highly uncertain or involve unique or unknown risks. This is demonstrated through the effects analysis in the EA.

6) *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* Future projects occurring within the gather area would be evaluated through the appropriate NEPA process and analyzed under a site-specific NEPA document. The Proposed Action does not set a precedent for future actions. There have been 24 wild horse gathers since the establishment of the PMWHR.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. The Proposed Action is not related to other actions within the project area that would result in cumulatively significant impacts. The EA includes an analysis of cumulative effects which considers past, present and reasonably foreseeable future actions in the project area that supports the conclusion that the proposed gather is not related to other actions with individually insignificant but cumulatively significant impacts. NEPA analysis would be completed for all proposed actions in the future. Cumulative impacts of the Proposed Action were analyzed in the EA.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources. The Proposed Action would not affect significant scientific, cultural, or historical resources. A cultural and species of concern resource inventory would be completed prior to trap and corral construction. Temporary trap sites and holding facilities would be cleared to determine the presence of sites that are unclassified, eligible, or potentially eligible for the NRHP or for the presence of plant species of concern. Archaeological site clearances and avoidance measures would ensure that loss or destruction of significant scientific, cultural, or historical resources does not occur.

9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical in the ESA of 1973. There are no known threatened and endangered species that may occur in the gather area; however, undesignated Canadian lynx habitat exists in the area. There are no known threatened and endangered plants present in the project area.

10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. The Proposed Action would not violate or threaten to violate any Federal, State, or local law or requirement imposed for the protection of the environment. The temporary closure has provisions to allow access on a case by case basis. The Proposed Action is in conformance with all applicable 43 CFR (Code of Federal Regulations). The Proposed Action would not violate the Migratory Bird Treaty Act or Endangered Species Act.

The Proposed Action detailed in the EA and FONSI has led to my decision that all practical means to avoid or minimize environmental harm and unnecessary or undue degradation of the public land have been adopted.

/s/ James M. Sparks
James M. Sparks
Field Manager
Billings Field Office

08/27/09
Date